

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19431
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated March 22, 2006. The notice of deficiency determination asserted additional Idaho income tax and interest in the total amount of \$1,081 for 2002.

FACTS AND PROCEDURAL HISTORY

The petitioner timely filed his 2002 Idaho resident income tax return. On that return, he reported capital gains from the disposition of certain securities. The total reported gain was \$20,106. On his return, he claimed the Idaho capital gains deduction in the amount of \$12,064.

The auditor disallowed the claimed capital gains deduction. She stated that the securities did not qualify for the deduction.

The petitioner does not contest the determination that the securities did not qualify for the claimed deduction. He raises two issues:

1. He claims that “since 99.98% of the time had passed [for the issuance of a notice of deficiency], it only seemed reasonable not to pursue the matter.”
2. He contends that interest should not be asserted.

OPINION

A. Statute of Limitations.

Idaho Code § 63-3068 sets out the statute of limitations for the issuance of notices of deficiency. It stated (2002), in part:

Period of limitations for issuing a notice of deficiency and collection of tax. -- (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.

The return in question was the petitioner's return for 2002. The due date of the return was April 15, 2003. The petitioner filed the return before the due date. Therefore, the period of limitations as set out in § 63-3068 (above) would have expired three years after the due date for the return to have been filed, or April 15, 2006. The Notice of Deficiency Determination was issued on March 22, 2006.

A statute of limitations extinguishes the right to prosecute an accrued cause of action after a period of time. Burlington Northern & Santa Fe Railway Company v. Poole Chemical Company, Inc., 419 F.3d 355 (5th Cir. 2005). In this case, the "period of time" had not passed. The petitioner cites no authority to indicate that the statute of limitations should expire at some time prior to the date set by statute.

The crux of the petitioner's argument appears to be that it was unfair for the Commission to issue a Notice of Deficiency Determination at the date so issued by the auditor.

The Idaho Supreme Court instructed as follows:

One of the amici curiae urges that ambiguous language of the statute should be so construed as to avoid socially undesirable or oppressive results, and that the construction contended for by the appellant would retard the economic development of the state. It may be agreed, where legislative language is ambiguous, and other rules of statutory construction do not control, the court should consider social and economic results. But we do not find the statutes involved to be ambiguous. In such case our duty is clear. We must follow the law as written. If it is socially or economically unsound, the power to correct it is legislative, not judicial. International Harvester Co. v. Wisconsin Dept. of Tax., supra; Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1; Wanke v. Ziebarth

Const. Co., 69 Idaho 64, 202 P.2d 384; State v. Village of Garden City, 74 Idaho 513, 265 P.2d 328.

John Hancock Mutual Life Insurance Company v. Neill, 79 Idaho 385, 404 (1957).

The law is clear. The statute of limitations as set out in Idaho Code § 63-3068 had not expired. The Notice of Deficiency Determination was issued within the statute of limitations.

B. Interest.

The petitioner's next argument is that he should not be liable for the interest asserted in the Notice of Deficiency Determination. As authority, he cites Idaho Code § 63-3045 as set out in Union Pacific Corporation v. Idaho State Tax Commission, 105 Idaho 471, 475 (1983): "Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice" He goes on to state, "We did not receive any notice until the deficiency [sic] and interest were assessed to us."

It appears that he reads Union Pacific to say that interest would not start to accrue until the taxpayer received notice. Possibly the petitioner failed to notice that the decision of the Idaho Supreme Court (issued in 1983) awarded interest from 1942. The Commission finds that neither the Union Pacific case nor Idaho Code § 63-3045 support the petitioner's position.

WHEREFORE, the Notice of Deficiency Determination dated March 22, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following taxes, penalty, and interest (calculated to November 30, 2006):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$914	\$193	\$1,107

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's rights to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in envelopes addressed to:

[Redacted]

Receipt No.